

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.**

FIRST APPEAL NO.689 OF 2005.

Ramchandra N. Narvekar & ors. : Appellants.

versus

Vasant Tukaram Shelke & ors. : Respondents.

Mr.Gauri Godse for the appellants.

Mr.Rajiv Patil with Mrs.B.V.Jadhav for Respondent
No.1.

CORAM : D.G.DESHPANDE, J.

DATED : 24th August 2005.

ORAL ORDER

1. By consent the matter is taken up for final hearing. Heard the advocates for the parties.

2. This appeal is filed by the original defendants against whom a decree for specific

performance was passed. It was an exparte decree. The contention of the defendants is that the power of attorney allegedly executed by Bhagirathibai was not in fact executed by her. Counsel for the respondents stated that even after the death of Bhagirathibai the power of attorney holder had accepted the consideration over and above the agreed one and the acceptance binds the appellants. Looking to this issue involved, it will be necessary in the interest of justice to give an opportunity to the appellants to contest the case before the trial Court. Hence the order :-

:ORDER:

The appeal is admitted and allowed.

The impugned order is set aside.

The matter is remanded to the trial Court for decision according to law.

A condition precedent is that the appellants to pay costs of Rs.10,000/- to the respondents/original plaintiffs

within six weeks from today. Costs to be paid or deposited in this Court. Payment of costs is a condition precedent.

If the costs is not paid within the aforesaid stipulated period, the decree passed by the trial Court will stand as it is.

Parties to appear before the trial Court on 5th October 2005 and filed their written statement on that very day itself. The trial Court will decide the suit within four months thereafter on merits.

Appeal is disposed of accordingly.

[D.G.DESHPANDE, J]